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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,444	11/14/2003	Clifford D. Bennett	442005-00108	9620
7590	08/04/2006		EXAMINER LAUX, JESSICA L	
Mark P. Levy Thompson Hine LLP P.O. Box 8801 Dayton, OH 45401-8801			ART UNIT 3635	PAPER NUMBER

DATE MAILED: 08/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/713,444	BENNETT, CLIFFORD D.
	Examiner Jessica Laux	Art Unit 3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 June 2006.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) 15, 18 and 19 is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-14, 16, 17 and 20 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 14 November 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

This action is in response to the amendment filed by applicant on 06/23/2006.

Election/Restrictions

Applicant's election with traverse of Species I in the reply filed on 06/23/2006 is acknowledged. The traversal is on the ground(s) that the examiner has failed to show there would be a serious burden on the examiner. This is not found persuasive because all of the disclosed species require a separate and distinct structure that would require examiner to search for each embodiment individually, creating a serious burden to the examiner.

The requirement is still deemed proper and is therefore made FINAL.

Further in light of applicants remarks, examiner is withdrawing claim 15 from consideration as being drawn to a non elected species (species IV), as applicant has indicated in the remarks on page 7. As such the rejection under 35 USC § 112 of claim 15 is moot in view of the withdrawal of claim 15 from consideration.

Response to Arguments

Applicant's arguments filed 06/23/2006 have been fully considered but they are not persuasive.

Applicant argues the strand receiving cups (12) in the lower chair portion of Hanson do not constitute a vertically oriented array of receptacles. Examiner disagrees, as an array is an orderly arrangement and the device Hanson is in the vertical direction with the receptacles also being orderly arranged in the vertical direction, hence a

vertically oriented array of receptacles. Applicant further argues that receptacles in the array are not spaced at a fixed vertical interval. Examiner disagrees. Examiner asserts that the receptacles (12 and 30) of Hanson are spaced in a fixed vertical interval in that the interval, one established, is fixed and not moving.

Applicant argues that is no teaching or motivation to modify Hanson to have the vertically spaced receptacles spaced $\frac{1}{4}$ or $\frac{1}{2}$ inch from each other. Examiner disagrees referring applicant to the previous office action in which such motivation is provided, and is reiterated, in part, here forth for applicants convenience: "...Applicant has not disclosed that having the receptacles spaces $\frac{1}{4}$ or $\frac{1}{2}$ inches apart solves any stated problem or is for any particular purpose or provides an advantage. Moreover, it appears that the chair and receptacles of Hanson et al., or applicant's invention, would perform equally well with the receptacles spaced any distance...".

The claims stand as rejected as submitted below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Claims 1-4, 6-10, 12-14, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Hanson et al. (4644727).

In regards to claim 1: Hanson et al. teaches a multi-level chair for supporting a post-tension concrete reinforcement cable at a fixed height from a bottom of a concrete form, said multi-level chair (Figure 10) comprising: a body including a plurality of receptacles (Figure 1, elements 12; Figure 5, element 30), the plurality of receptacles

comprising a vertically oriented array of receptacles positioned at different heights from the bottom of the concrete form (Figure 10, where element 31 is at the top of the chair and elements 12 are at the bottom), said receptacles in the array being spaced at a fixed vertical interval and being adapted to support a post-tension reinforcement cable of a predetermined diameter (Col. 2, lines 21-22).

In regards to claim 2: The multi-level chair of claim 1 above, wherein said body is injection molded plastic (Col. 2, lines 65-66).

In regards to claim 3: The multi-level chair of claim 1 above, wherein said body has an inverted V-shape (Figure 10) including a pair of legs extending downwardly from an apex of said body. Where the apex is at element 30 and the legs are elements 34 and 32.

In regards to claim 4: The multi-level chair of claim 3 above, wherein said receptacles are at staggered heights along said legs (Figure 10, where the receptacles 31 and 12 are at different elevations of the chair with 31 being the uppermost).

In regards to claim 6: Hanson et al. teaches a multi-level chair (Figure 10) for supporting a post-tension concrete reinforcement cable at a fixed height from a bottom of a concrete form, said multi-level chair comprising: an inverted V-shaped body (Figure 10) having a pair of legs extending downwardly from an apex of said body (where the apex is at element 30 and the legs are elements 34 and 32), said body including multiple receptacles comprising a vertically oriented array of receptacles positioned at different heights from the bottom of the concrete form along said legs (Figure 1, elements 12; Figure 5, element 30), each of said receptacles in the array being spaced

at a fixed vertical interval and being sized to support said post-tension reinforcement cable (Col. 2, lines 21-22) so that a user may place said post-tension cable in a selected one of said receptacles.

In regards to claim 7: The multi-level chair of claim 6 above, wherein said body is injection molded plastic (Col. 2, lines 65-66).

In regards to claim 8: The multi-level chair of claim 6 above, wherein said receptacles are identically sized (Figure 3, which depicts the receptacle used in the chair).

In regards to claim 10: The multi-level chair of claim 6 above, wherein said receptacles are adapted to receive the same gauge cable (Figure 3, which depicts the receptacle used in the chair as the same size and therefore able to receive the same gauge cable).

In regards to claim 12: Hanson et al. teaches a multi-level chair for supporting a concrete reinforcement cable under tension at a fixed height from a bottom of a concrete form, said multi-level chair comprising: an inverted V-shaped body (Figure 10) having a pair of legs extending downwardly from an apex of said body (where the apex is at element 30 and the legs are elements 34 and 32), each of said legs having a fixed length and multiple receptacles comprising a vertically oriented array of receptacles, said receptacles in the array being spaced at a fixed vertical interval and positioned at different heights (Figure 1, elements 12; Figure 5, element 30) from the bottom of the concrete form along said length of said leg for supporting said reinforcement cable (Col.

2, lines 21-22), wherein a user may support said reinforcement cable in a selected receptacle.

In regards to claim 13: The multi-level chair of claim 12 above, wherein said body is injection molded plastic (Col. 2, lines 65-66).

In regards to claim 14: The multi-level chair of claim 12 above, wherein each of said legs terminates in a foot (element 18).

In regards to claim 17: The multi-level chair of claim 12 above, wherein said receptacles are adapted to receive the same gauge cable (Figure 3, which depicts the receptacle used in the chair as the same size and therefore able to receive the same gauge cable).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanson et al. (4644727). Hanson et al. teaches a tension cable chair as in claims 6 and 12 above. Hanson is silent as to the distance between cable receiving receptacles. Applicant has not disclosed that having the receptacles spaces $\frac{1}{4}$ or $\frac{1}{2}$ inches apart solves any stated problem or is for any particular purpose or provides an advantage. Moreover, it appears that the chair and receptacles of Hanson et al., or applicant's invention, would perform equally well with the receptacles spaced any distance.

Accordingly, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have modified Hanson such that the receptacles be spaced $\frac{1}{4}$ or $\frac{1}{2}$ inches apart because such a modification would have been considered a mere design consideration which fails to patentable distinguish over Hanson.

In view of applicant's amendment to the claims, examiner deemed a new search necessary that resulted in new prior art that anticipates the claims, including those previously indicated as allowable. As such the previously indicated allowable claims 5 and 11 and new claim 20 are rejected as indicated below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5-6, 11, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Fisher (6082068).

Regarding claims 1 and 6: Fisher discloses multi-level chair (Figure 2) capable of supporting a post-tension concrete reinforcement cable at a fixed height from a bottom of a concrete form, said multi-level chair comprising: a body including a plurality of receptacles (13, 17, 21), the plurality of receptacles comprising a vertically oriented array of receptacles positioned at different heights from the bottom of the concrete form (in that the chair and receptacles are orderly arranged in a vertical direction), said

receptacles in the array being spaced at a fixed vertical interval and are capable of supporting a post-tension reinforcement cable of a predetermined diameter.

Regarding claim 3: The multi-level chair of claim 1, wherein said body has an inverted V-shape including a pair of legs (23 and 25) extending downwardly from an apex (11) of said body (Figure 2).

Regarding claims 5 and 11 and 20 (including the limitations of claims 1 and 3): The multi-level chair of claims 3 and 6, wherein said chair is nestably stackable (Figure 5 and Col. 4, line 8).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 8:30am to 4:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JL
07/25/2006


N. Slack
Supervisory Patent Examiner